

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA

v.

MICHAEL J. KOPPER

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§

Cr. No. H-02-

COOPERATION AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the Department of Justice, by the Enron Task Force (the "Department") and Michael J. Kopper ("Defendant") agree to the following:

1. Defendant will waive indictment and plead guilty in the Southern District of Texas to an information charging him with one count of conspiracy to commit wire fraud, in violation of 18 U.S.C. § 371, and one count of conspiracy to engage in monetary transactions in property derived from specified unlawful activity, in violation of 18 U.S.C. §§ 1956(h) and 1957.

Those charges carry the following statutory penalties:

A. Count One—Conspiracy to Commit Wire Fraud

- a. Maximum term of imprisonment: five years
(18 U.S.C. § 371)
- b. Minimum term of imprisonment: zero years
(18 U.S.C. § 371)
- c. Maximum supervised release term: three years, to follow any term of imprisonment; if a condition of release is violated, the defendant may be sentenced to up to two years without credit for pre-release imprisonment or time previously served on post-release supervision
(18 U.S.C. §§ 3583 (b), (e))
- d. Maximum fine: \$250,000
(18 U.S.C. § 3571(b)(3)).

- e. Restitution: As provided by statute (18 U.S.C. § 3663 & A).
- f. Forfeiture of proceeds traceable to the offense, as provided by 18 U.S.C. § 981(a)(1)(C) and 24 U.S.C. § 2461(c)
- g. \$100 special assessment (18 U.S.C. § 3013).

B. Count Two—Conspiracy to Engage in Monetary Transactions in Property Derived from Specified Unlawful Activity

- a. Maximum term of imprisonment: ten years (18 U.S.C. §§ 1956(h) and 1957)
- b. Minimum term of imprisonment: zero years (18 U.S.C. §§ 1956(h) and 1957)

Maximum supervised release term: three years, to follow any term of imprisonment; if a condition of release is violated, the defendant may be sentenced to up to two years without credit for pre-release imprisonment or time previously served on post-release supervision (18 U.S.C. §§ 3583 (b), (e))

- d. Maximum fine: \$500,000 or twice the amount of criminally derived property involved in financial transactions (18 U.S.C. § 1956(a) and (h)).
- e. Restitution: As provided by statute (18 U.S.C. § 3663 & A).
- f. Forfeiture of property involved in the offense or property traceable to such property, as provided by 18 U.S.C. 982(a)(1)
- g. \$100 special assessment (18 U.S.C. § 3013).

Acceptance of Responsibility

- 2. Defendant's sentence is governed by the United States Sentencing

Guidelines. The Department will advise the Court and the Probation Department of information

relevant to sentencing, including all criminal activity engaged in by Defendant, and such information may be used by the Court in determining Defendant's sentence. Based on information known to it now, the Department will not oppose a downward adjustment of three levels for acceptance of responsibility under U.S.S.G. § 3E1.1

Defendant's Obligations

3. Defendant will provide truthful, complete and accurate information and will cooperate fully with the Department. This cooperation will include, but is not limited to, the following:

- a. Defendant agrees to be fully debriefed and to attend all meetings at which his presence is requested by the Department, concerning his participation in and knowledge of all criminal activities.
- b. Defendant waives all claims of attorney-client privilege and agrees to furnish to the Department all documents and other material that may be relevant to the investigation and that are in Defendant's possession or control, except as to communications relating to investigations by the Department and the United States Securities and Exchange Commission ("SEC"), and communications with counsel after December 2, 2001.
- c. Defendant agrees not to reveal his cooperation, or any information derived therefrom to any third party without prior consent of the Department, and to instruct his attorneys to do the same.
- d. Defendant agrees to testify at any proceeding in the Southern District of Texas or elsewhere as requested by the Department.
- e. Defendant consents to adjournments of his sentence as requested by the Department and agrees that his obligations under this agreement continue until the Department determines that his cooperation is concluded.
- f. Defendant agrees not to receive remuneration for any dissemination, directly or indirectly, by him of information concerning his work at Enron Corp., any LJM entity, or any related or affiliated entity, including special purpose entities, including but not limited to books, articles, speeches, and interviews, but not including professional services performed by him in the course of any full-time employment.

The Department's Obligations

4. The Department agrees that:
 - a. Except as provided in paragraphs 1, 10, and 11, no criminal charges will be brought against Defendant for his heretofore disclosed participation in criminal activity; and
 - b. No statements made by Defendant during the course of this cooperation will be used against him except as provided in paragraphs 2, 10, and 11.

Availability for Debriefings

5. Defendant agrees that the Department may meet with and debrief him without the presence of counsel, unless Defendant specifically requests counsel's presence at such debriefings and meetings. Upon request of Defendant, the Department will endeavor to provide advance notice to counsel of the place and time of meetings and debriefings, it being understood that the Department's ability to provide such notice will vary according to time constraints and other circumstances. The Department may accommodate requests to alter the time and place of such debriefings. It is understood, however, that any cancellation or rescheduling of debriefings or meetings requested by Defendant that hinder the Department's ability to prepare adequately for trials, hearings or other proceedings may adversely affect Defendant's ability to provide substantial assistance. Matters occurring at any meeting or debriefing may be considered by the Department in determining whether Defendant has provided substantial assistance or otherwise complied with this agreement and may be considered by the Court in imposing sentence regardless of whether counsel was present at the meeting or debriefing.

Motion for Downward Departure

6. If the Department determines that Defendant has cooperated fully, provided substantial assistance to law enforcement authorities and otherwise complied with the terms of this agreement, the Department will file a motion pursuant to U.S.S.G. § 5K1.1 and 18 U.S.C. § 3553(e) with the sentencing Court setting forth the nature and extent of his cooperation. Such a motion will permit the Court, in its discretion, to impose a sentence below the applicable Sentencing Guidelines range and also below any applicable mandatory minimum sentence. In this connection, it is understood that a good faith determination by the Department as to whether Defendant has cooperated fully and provided substantial assistance and has otherwise complied with the terms of this agreement, and the Department's good faith assessment of the value, truthfulness, completeness and accuracy of the cooperation, shall be binding upon him. Defendant agrees that, in making this determination, the Department may consider facts known to it at this time. The Department may or may not, in its discretion, recommend to the Court a specific sentence to be imposed. The Department cannot and does not make a promise or representation as to what sentence will be imposed by the Court.

Forfeiture

7. Defendant agrees that he will not contest the forfeiture of, and will surrender all claims he may have in, \$4 million from Charles Schwab account number 3962-3986 in the name of LJM2 Capital Management, LP, which Defendant acknowledges represents substitute assets for criminally derived property.

Department's Recommendation Regarding Forfeiture and Restitution

8. Defendant has entered into a separate agreement with the United States

Securities and Exchange Commission (the "SEC Settlement"). As part of the SEC Settlement, Defendant has agreed to pay \$8 million within 30 days in a manner directed by the SEC. The Department agrees that, provided Defendant fulfills his obligation pursuant to paragraph 7 of this agreement and pays or causes to be paid \$8 million as required by the SEC Settlement, it will recommend that no additional forfeiture or restitution be ordered by the Court against the Defendant at the time Defendant is sentenced. Defendant understands, however, that the Department's recommendation is not binding on the Court, and the Court may order Defendant to pay restitution notwithstanding the Department's recommendation. Should the Court order Defendant to pay restitution, he will not be permitted on that basis alone to withdraw his guilty plea.

Hyde Amendment Waiver

9. Defendant agrees that with respect to all charges referred to in paragraphs 3 and 4(a) he is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law. Defendant waives any right to additional disclosure from the government in connection with the guilty plea.

Breach Of Agreement

10. Defendant must at all times give complete, truthful, and accurate information and testimony, and must not commit, or attempt to commit, any further crimes. Should it be judged by the Department that Defendant has failed to cooperate fully, has intentionally given false, misleading or incomplete information or testimony, has committed or attempted to commit any further crimes, or has otherwise violated any provision of this agreement, Defendant will not be released from his plea of guilty but the Department will be

released from its obligations under this agreement, including (a) not to oppose a downward adjustment of three levels for acceptance of responsibility described in paragraph 2 above, (b) to file the motion described in paragraph 6 above, or to make the recommendation regarding restitution described in paragraph 8 above. Moreover, the Department may withdraw the motion described in paragraph 6 above, and the recommendation described in paragraph 8, if such motion or recommendation has been filed prior to sentencing. Defendant will also be subject to prosecution for any federal criminal violation of which the Department has knowledge, including, but not limited to, the criminal activity described in paragraph 4.

11 Any prosecution resulting from Defendant's failure to comply with the terms of this agreement may be premised upon: (a) any statements made by Defendant to the Department or to other law enforcement agents on or after July 22, 2002; (b) any testimony given by him before any grand jury or other tribunal, whether before or after the date this agreement is signed by Defendant; and (c) any leads derived from such statements or testimony. Prosecutions that are not time-barred by the applicable statutes of limitation on the date this agreement is signed may be commenced against the defendant in accordance with this paragraph, notwithstanding the expiration of the statutes of limitation between the signing of this agreement and the commencement of any such prosecutions. Furthermore, Defendant waives all claims under the United States Constitution, Rule 11(e)(6) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal statute or rule, that statements made by him on or after July 22, 2002, or any leads derived therefrom, should be suppressed.

Bankruptcy Waiver

12. Defendant agrees not to attempt to avoid paying any fine or restitution

imposed by the Court through any proceeding pursuant to the United States Bankruptcy Code. Defendant waives all rights, if any, to obtain discharge or to delay payment of any fine or restitution obligation or alter the time for payment by filing a petition pursuant to the Bankruptcy Code. Defendant stipulates that enforcement of any fine or restitution obligation by the Department is not barred or affected by the automatic stay provisions of the United States Bankruptcy Code (Title 11, United States Code, Section 362), and that enforcement of any fine or restitution obligation by the Department is a valid exercise of its police or regulatory power within the meaning of Title 11, United States Code, Section 362(b). Defendant stipulates and agrees not to institute or participate in any proceeding to interfere with, alter, or bar enforcement of any fine or restitution obligation pursuant to the automatic stay or other provision of the Bankruptcy Code in any case filed by Defendant or his creditors. Upon request of the Department, Defendant will execute an order or stipulation granting the Department relief from the automatic stay or other Bankruptcy Code provisions in order to enforce any fine or restitution obligation. Defendant stipulates that any fine or restitution obligation imposed by the Court is not dischargeable pursuant to Title 11 United States Code, Section 523 in any case commenced by Defendant or his creditors pursuant to the Bankruptcy Code. Defendant's waivers and stipulations or agreements set forth above are made in exchange for the Department's concessions set forth in this agreement.

Final Sentence

13 Defendant understands that the sentence to be imposed is within the sole discretion of the sentencing judge. If the Court should impose any sentence up to the maximum established by statute, Defendant cannot, for that reason alone, withdraw a guilty plea and will

remain bound to fulfill all of the obligations under this agreement.

Stipulated Factual Basis for Guilty Plea

4. Defendant is pleading guilty because he is in fact guilty of the charges contained in the information. In pleading guilty, Defendant acknowledges that all of the facts stated below are true, and were the case to go to trial, the Department would be able to prove all of those facts beyond a reasonable doubt. However, the parties agree that this factual basis does not include all relevant conduct that may be considered by the Court for sentencing purposes.

The stipulated factual basis for the guilty plea is as follows:

Enron structured transactions which used special purpose entities (“SPEs”) in order to achieve “off-balance-sheet” treatment of certain items for Enron’s financial reporting purposes and to accomplish certain regulatory objectives. As a result of certain of these transactions, Enron was able present its financial results more attractively as measured by criteria favored by Wall Street analysts and credit rating agencies. It was part of KOPPER’s job responsibility at Enron to assist in the structuring of these SPEs.

As an Enron employee, KOPPER knew that he owed a duty to the company and its shareholders to provide his honest services.

Some of the SPEs used by Enron were under the control of Enron’s CFO, KOPPER, and others. In some instances, KOPPER and others took advantage of their simultaneous influence over Enron’s business activities and the SPEs to generate millions of dollars for themselves, at Enron’s expense, and in violation of their duty to provide Enron and its shareholders with honest services. Three such transactions are RADR, Chewco and Southampton.

RADR: In approximately May 1997, Enron had to divest itself of certain California wind farms for regulatory reasons. Enron’s CFO, KOPPER, and others devised a scheme secretly to enrich themselves through the sale of Enron’s interest in the wind farms to an SPE. KOPPER recruited his domestic partner and another friend to act as equity “investors” in the SPE, which was known as RADR (the “Friends”).

Enron’s CFO secretly funded the Friends’ “investments” through a loan to

KOPPER, who in turn lent money to the Friends. It was understood that the Friends would repay the "loans" from KOPPER with distributions from their RADR "investments," and that KOPPER would in turn repay Enron's CFO.

Between August 1997 and July 2000, RADR generated approximately \$4.5 million for the Friends, \$2.2 million of which went to KOPPER's domestic partner. KOPPER and his partner jointly controlled the partner's RADR proceeds. KOPPER also directed his partner and the other Friend to wire transfer proceeds or write checks to Enron's CFO, KOPPER, several of their family members, and various Enron employees and their family members.

Chewco: In 1993, Enron and the California Public Employees' Retirement System ("CALPERS") entered into a joint venture investment partnership called Joint Energy Development Limited Partnership ("JEDI").

In the summer of 1997, Enron began to seek a buyer for CALPERS' share of the JEDI partnership so that CALPERS would agree to invest additional funds in an even larger partnership to be called JEDI II. CALPERS imposed a deadline of November 6, 1997 for the buyout.

In November 1997, Enron formed Chewco, an SPE, to buy out CALPERS' JEDI interest. Enron's CFO initially sought to become Chewco's general partner, but substituted KOPPER when it became clear that Enron otherwise would have to disclose publicly the CFO's participation.

Enron structured the transaction so that an \$11.03 million loan to Chewco that was used to fund its investment was partly protected against risk of loss, and the remainder of the equity, \$125,138, came from KOPPER and his domestic partner.

From December 1997 through December 2000, KOPPER received various payments relating to Chewco, which he secretly shared with Enron's CFO. KOPPER received a total of approximately \$1.5 million in management fees, which he shared with the CFO mainly through checks payable to members of the CFO's family. In December 1998, Enron's CFO caused Enron to pay a \$400,000 "nuisance fee" to Chewco, of which KOPPER transferred \$67,224 back to Enron's CFO, again through checks written to the CFO or members of his family. KOPPER also paid the CFO's wife approximately \$54,000 for acting as a Chewco administrative assistant.

In March 2001, Enron bought Chewco's limited partnership interest in JEDI for \$35 million, of which KOPPER and his domestic partner received approximately \$3 million. In September 2001, Enron's CFO authorized a further \$2.6 million "tax indemnity payment" to Chewco, which KOPPER wire transferred to an account under his control.

Southampton: In approximately February 2000, Enron's CFO, KOPPER, three bankers employed by National Westminster Bank ("NatWest") and others devised a scheme to defraud Enron and others in connection with a buyout of the investment interests of NatWest and Credit Suisse First Boston ("CSFB") in an SPE entity called Swap Sub.

To carry out the scheme, KOPPER, Enron's CFO, and others caused Enron to pay \$30 million for the Swap Sub buyout. That price was based on Enron's CFO's false representation to Enron that NatWest and CSFB had agreed to sell their interests in Swap Sub for \$20 million and \$10 million, respectively. In fact, NatWest received only \$1 million and had agreed to receive this sum based on misrepresentations and fraudulent conduct of its own employees, who sought to skim profits that should have gone to NatWest.

As a result, the three NatWest bankers who participated in the scheme received approximately \$7.3 million. The balance of the funds went to investors in an entity called Southampton Place LP ("Southampton"), which KOPPER created. The Southampton "investors" were KOPPER, who contributed \$25,000 and caused Chewco to loan an additional \$750,000, and received approximately \$4.5 million, a purported charitable foundation in the name of the CFO's family, which contributed \$25,000 and received approximately \$4.5 million, and five Enron and LJM employees chosen by KOPPER and the CFO, who contributed a total of less than \$20,000 and received a total of approximately \$3.3 million.

KOPPER agrees that the wire transfers of funds described in Paragraph 27 of the Information were among those made in furtherance of the scheme to defraud. He further agrees that some of those transfers were in interstate or foreign commerce.

KOPPER further agrees that monetary transactions described in Paragraphs 27, 30, 31 and 32 of the Information affected interstate or foreign commerce and involved property of a value greater than \$10,000, namely, money, which constituted or was derived from proceeds obtained from the wire fraud scheme involving RADR, Chewco, and Southampton.

Scope

15. This agreement does not bind any federal, state, or local prosecuting authority other than the Department, and does not prohibit the Department from initiating or prosecuting any civil or administrative proceedings directly or indirectly involving Defendant.

Complete Agreement

16. No promises, agreements or conditions have been entered into other than those set forth in this agreement, and none will be entered into unless memorialized in writing and signed by all parties. This agreement supersedes any prior promises, agreements or conditions between the parties. To become effective, this agreement must be signed by all signatories listed below.

Dated: Houston, Texas
August 20, 2002

Respectfully submitted,

ENRON TASK FORCE

LESLIE R. CALDWELL
Director

THOMAS A. HANUSIK
Trial Attorney

Agreed and consented to

Defendant Michael J. Kopper

Approved by:

Counsel to Defendant
David M. Howard, Esq.

ADDENDUM FOR DEFENDANT KOPPER

I have consulted with my attorney and fully understand all my rights with respect to the Information pending against me. I have consulted with my attorney and fully understand all my rights with respect to the provisions of the United States Sentencing Commission's Guidelines Manual which may apply in my case. I have read this cooperation agreement and carefully reviewed every part of it with my attorney. I understand this agreement and I voluntarily agree to it

Michael J. Kopper
Defendant

Date

ADDENDUM FOR DEFENSE COUNSEL

I have fully explained to Defendant KOPPER his rights with respect to the pending Information. I have reviewed the provisions of the United States Sentencing Commission's Guidelines Manual and I have fully explained to Defendant KOPPER the provisions of those Guidelines which may apply in this case. I have carefully reviewed every part of this cooperation agreement with Defendant KOPPER. To my knowledge, Defendant KOPPER's decision to enter into this agreement is an informed and voluntary one.

David M. Howard, Esq.
Attorney for Defendant Kopper

Date

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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| MICHAEL J. KOPPER | § | |

SENTENCE DATA SHEET

DEFENDANT: MICHAEL J. KOPPER

CRIMINAL NO: H-02-

GUILTY PLEA Count One (Conspiracy to Commit Wire Fraud)
Count Two (Conspiracy to Engage in Monetary Transactions in Property Derived from Specified Unlawful Activity)

SUBSTANCE OF COOPERATION AGREEMENT: Pursuant to Fed. R. Crim. P. 11(e)(1)(B)-Defendant will plead to counts one (conspiracy to commit wire fraud) and two (conspiracy to engage in monetary transactions in property derived from specified unlawful activity) of an information

COUNT ONE: Conspiracy (18 U.S.C. § 371).

ELEMENTS: 1) An agreement between two or more persons,
2) to commit a crime against the United States, and
3) an overt act committed by one of the conspirators in furtherance of the agreement.

PENALTY: Imprisonment not to exceed 5 years; and/or fine not to exceed \$250,000. 18 U.S.C. §§ 371 and 3571(b)(3); Forfeiture of proceeds traceable to the offense, as provided by 18 U.S.C. § 981(a)(1)(C) and 24 U.S.C. §2461(c).

Defendant also faces a possible term of supervised release after imprisonment not more than 3 years. 18 U.S.C. §§ 3559(a)(4) and 3583(b)(2).

COUNT TWO: Conspiracy to Engage in Monetary Transactions in Property Derived from Specified Unlawful Activity (18 U.S.C. § 1956(h), 1957).

ELEMENTS: 1) an agreement between two or more persons,
2) to engage in a monetary transaction in criminally derived property,
3) of a value greater than \$10,000,
4) that is derived from specified unlawful activity, to wit, wire fraud.

PENALTY: Imprisonment not to exceed 10 years; and/or fine of \$250,000 or twice the amount of the criminally derived property involved in the transactions. 18 U.S.C. §§ 1956(h) and 1957(b)(2), 18 U.S.C. 3571(b)(3); Forfeiture of property involved in the offense or property traceable to such property, as provided by 18 U.S.C. 982(a)(1).

Defendant also faces a possible term of supervised release after imprisonment not more than 3 years. 18 U.S.C. §§ 3559(a)(3) and (4) and 3583(b)(2).

**ALTERNATIVE
FINE BASED ON
GAIN OR LOSS:**

Defendant may be fined twice the gross pecuniary gain from the offense.
Gross pecuniary gain: Approximately \$19.4 million. 18 U.S.C. 3571(d)

**SENTENCING
GUIDELINES:**

Applicable.

**SUPERVISED
RELEASE:**

Not to exceed three years on Counts One and Two. 18 U.S.C. §§ 3559(a)(3) and (4) and 3583(b)(2). If defendant violates the conditions of any period of supervised release which may be imposed as part of his sentence, then defendant may be imprisoned for up to two (2) years without credit for time already served on the term of supervised release prior to the violation. 18 U.S.C. § 3583(e)(3).

**SPECIAL
ASSESSMENT:**

\$100 for each count. 18 U.S.C. § 3013(a)(2)(A).

ATTACHMENT:

Cooperation Agreement

**DEFENDANT
WAIVED HIS
RIGHT TO
APPEAL:**

No.